

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.685 OF 1991

The Board of Trustees of the Port
of Bombay, a Body Corporate constituted
under the provisions of the Major Port
Trusts Act, 1963, as amended by the Major
Port Trusts (Amendment) Act, 1974, having
its principal place of business at
"Vijay Deep" Shoorji Vallabhdas Marg,
Bombay--400 038. : Petitioner

V/s.

Taparia Tools Limited, Syleester
Building, 20 Shahid Bhagat Singh Road,
Bombay--400 023. : Respondent

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Mr.U.J. Makhija i/b. M/s.Mulla & Mulla & C.B.C. for the
petitioner.

None present for the respondent.

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CORAM : S.A. BOBDE, J.

August 25, 2005.

ORAL JUDGEMENT

1. This petition, by the Board of Trustees of the Port of Bombay, questions the order of the appellate Bench, hereinafter referred to as the "appellate Court", of the Court of Small Causes at Mumbai in appeal. The appellate Court has dismissed the petitioner's suit and held that they have no right to recover demurrage charges for a period of 12 months.

2. The petitioner sued the respondent, Taparia Tools Limited, for a sum of Rs.6,459.83 together with interest on Rs.6,340.94 at 15% per annum from the date of filing of the suit till payment or realisation.

3. The facts leading to the suit are that the respondent is a consignee who imported a consignment of six cases of Carbon Steel Bars which was landed in the Port of Bombay from the vessel S.S. Jala Mangala under I.G.M. no.1009, item no.465 dated 21.10.1975. The date of landing was 27.10.1975. The Last Free Day was 31.10.1975 i.e. the day upto which the petitioner would allow the clearance of the goods without charging any demurrage.

4. However, the goods were not cleared by the consignee for over two months from the date of landing. The petitioner, therefore, issued a notice of sale dated

29.7.1976 informing the respondent that if the goods were not cleared on payment of charges accrued within ten days, they would be sold by public auction under section 61 of the Major Port Trusts Act, 1963, hereinafter referred to as the "Act". The respondent appears to have paid a sum of Rs.2,000/- and sought withdrawal of the petitioner's proposal to auction. The petitioner informed the respondent that their request for withdrawal of the goods from sale would be examined after receipt of Rs.16,000/- as the Port Trust charges accrued. Since the respondent did not clear the goods, the petitioner sold six cases of Carbon Steel Bars by public auction on 23.1.1979. They got a price of Rs.14,782/- only. This amount was short of the amount due to the petitioner from the respondent. According to the petitioner, the aggregate amount recoverable, inclusive of Port Trust charges is Rs.23,122.94. This is inclusive of:-

"Expenses of Sale	:	Rs. 3755.70
Customs Duty	:	Rs. 6724.13
Port Trust Charges	:	Rs.12643.02

		Rs.23122.94"
		=====

5. After giving credit of Rs.2,000/- for the amount paid by the respondent, the petitioner claimed a net deficit in Port Trust charges in the sum of Rs.6,340.94 with interest at 15% per annum till the date of filing of the suit. The total claim due and payable on the date of the suit is Rs.6,459.83.

6. The Court of Small Causes at Mumbai which tried the suit passed a decree for Rs.6,459.63 with interest on Rs.6340.94 at 15% per annum from the date of the suit till realisation of the entire amount. The respondent filed an appeal which is styled as Full Court Application no.135 of 1987 to the Appellate Court. The Appellate Court dismissed the petitioner's suit applying section 63(1)(c) of the Act. Section 63(1)(c) of the Act reads as follows:-

"63. (1) The proceeds of every sale under section 61 or section 62 shall be applied in the following order--

(a)

(b)

(c) in payment of the rates and expenses of

landing, removing, storing or warehousing the same, and of all other charges due to the Board in respect thereof including demurrage (other than penal demurrage) payable in respect of such goods for a period of four months from the date of landing."

Applying clause (c), the Appellate Court came to the conclusion that the petitioner is not entitled to recover any charges, including demurrage, for a period exceeding four months from the date of landing and that the petitioner has already recovered. The Appellate Court thus held that the petitioner is not entitled to recover demurrage for a period of 12 months not only 1/3rd of the total charges of Rs.12,663.02. This comes to Rs.4,214/-. It disallowed the claim of Rs.8,429/- and as a consequence, dismissed the petitioner's suit.

7. Though the Appellate Court has so observed, it was not right in making the observations against the petitioner that they have not specified penal demurrage since obviously there is no claim made out by the petitioner on account of penal demurrage.

8. Mr.Makhija, the learned counsel for the petitioner,

submitted that section 63 reproduced above is a provision which merely sets out the priority according to which the sale proceeds must be applied. It does not limit the petitioner to recover demurrage only for a period of four months from the date of landing. The learned counsel submits that the scheme of the Act clearly empowers the petitioner to charge and, therefore, recover demurrage and other charges such as wharfage and storage on the basis of a scale of rates framed by the Board. It is clear that demurrage is one of the rates which can be fixed and charged by the Board [see Board of Trustees, Port of Bombay v. Jai Hind Oil Mills Co. (A.I.R. 1987 S.C. 622)].

9. The learned counsel for the petitioner submits that the Act itself empowers the Board to recover any such rates, damages, etc., under section 131 by way of a suit. Section 131 reads as follows:-

"131. Without prejudice to any other action that may be taken under this Act, a Board may recover by suit any rates, damages, expenses, costs, or in the case of sale the balance thereof, when the proceeds of sale are insufficient, or any penalties payable to, or

recoverable by, the Board under this Act or under any regulations made in pursuance thereof."

10. Having examined the scheme of the Act, I am of view that there is much substance in the contention on behalf of the petitioner. Section 48 clearly empowers the Board to frame a scale of rates, inter alia, in regard to wharfage, storage or demurrage of goods on any such place. Demurrage, with which this case is concerned, is recoverable under section 58.

11. Section 58 specifically empowers the Board to recover demurrage in that it provides that the rates in respect of goods shall be payable immediately, depending on the circumstance when they are removed from the premises of the Board. That section reads as follows:-

"58. Rates in respect of goods to be landed shall be payable immediately on the landing of the goods and rates in respect of goods to be removed from the premises of a Board, or to be shipped for export, or to be transhipped, shall be payable before the goods are so removed or shipped or

transhipped."

12. Section 61 empowers the Board in its discretion to sell by public auction such goods, after the expiry of two months from the time when any goods have passed into its custody for the recovery of, inter alia, any rates payable to the Board in respect of such goods which have not been paid. The relevant part of section 61 reads as follows:-

"61.(1) A Board may, after the expiry of two months from the time when any goods have passed into its custody, or in the case of animals and perishable or hazardous goods after the expiry of such shorter period not being less than twenty-four hours after the landing of the animals or goods as the Board may think fit, sell by public auction or in such cases as the Board considers it necessary so to do, for reasons to be recorded in writing, sell by tender, private agreement or in any other manner such goods or so much thereto as, in the opinion of the Board, may be necessary--

(a) if any rates payable to the Board in

respect of such goods have not been paid, or

- (b)
- (c)
- (2)
- (3)
- (4)"

13. Section 62 empowers the Board to require the owner of the goods to remove them forthwith and in default of compliance to sell them by public auction or by any of the modes prescribed therein. Section 62, insofar as it relevant, reads as follows:-

"62. (1) Notwithstanding anything contained in this Act, where any goods placed in the custody of the Board upon the landing thereof are not removed by the owner or other person entitled thereto from the premises of the Board within one month from the date on which such goods were placed in their custody, the Board may, if the address of such owner or person is known, cause a notice to be served upon him by letter delivered at such address or sent by post, or if the notice cannot be

so served upon him or his address is not known, cause a notice to be published in the Port Gazette or where there is no Port Gazette, in the Official Gazette and also in at least one of the principal local daily newspapers, requiring him to remove the goods forthwith and stating that in default of compliance therewith the goods are liable to be sold by public auction or by tender, private agreement or in any other manner:

Provided that where all the rates and charges payable under this Act in respect of any such goods have been paid, no notice of removal shall be so served or published under this sub-section unless two months have expired from the date on which the goods were placed in the custody of the Board.

(2)

(3) If such owner or person does not comply with the requisition in the notice served upon him or published under sub-section (1), the Board may, at any time after the

expiration of two months from the date on which such goods were placed in its custody, sell the goods by public auction or in such cases as the Board considers it necessary so to do, for reasons to be recorded in writing sell by tender, private agreement or in any other manner after giving notice of the sale in the manner specified in sub-sections (2) and (3) of section 61.

(4)

(5)"

It is in this context that section 63 reproduced supra, relied upon by the appellate Court for dismissing the petitioner's suit may be read. Section 63 provides for the priority according to which the proceeds for sale made under section 61 or 62 shall be applied. It undoubtedly provides vide clause (c) thereof that the proceeds of every sale shall, after they are applied for the purpose mentioned in clauses (a) and (b), be applied for rates and expenses, including demurrage (other than penal demurrage) payable in respect of such goods for a period of four months from the date of landing. This section provides that after the sale proceeds are applied for demurrage for

a period of four months, the proceeds shall then be applied for any penalty or fine due to the Central Government as provided in clauses (c) and (d) thereof, and thereafter, in payment of any other sum due to the Board. It is clear that the intention of enacting section 63 is that the proceeds of the sale shall be applied in the manner set out, and as regards demurrage, shall be applied only in respect of demurrage for a period of four months. This limit is imposed so that the entire amount is not applied by the Board for recovery of the entire demurrage due to it, but the remaining amount is appropriated for sum due to the Central Government and then for any other sum due to the Board. In other words, clause (c) of sub-section (1) of section 63 merely limits the application of the sale proceeds towards demurrage for four months from the date of landing. There is nothing in the section which defeats the rights of the Board to recover rates of demurrage which were payable to it and which it has a right to recover in accordance with sections 57 and 58 of the Act. In fact, this is obvious from the inclusion of clause (c) which allows the Board to apply any remaining sum in payment of any other sum due to the Board. In the context it is clear that the words "other sum" do not refer to a sum other than demurrage, but mean and include any sum of demurrage remaining

unpaid, even after appropriation under clause (c). Indeed, clause (c) of this section cannot be construed in such a manner that it takes away the right of the Board to recover the entire demurrage due to it under section 58. In other words, the legislative scheme cannot be construed in such a manner that one provision is construed so as to take away a right conferred by another provision.

14. This view is fortified by section 131 which empowers the Board to recover by suit any rates, damages, expenses, costs, etc., recoverable by the Board under the Act. I might mention in passing that the charges such as those on account of wharfage, demurrage, storage, etc., are understood as rates under the Act. Therefore, if the Board has a claim against a person under the Act and the claim includes a claim on account of demurrage for a period greater than four months, such a claim is not defeated merely because section 63 provides the order in which sale proceeds shall be applied. Indeed it would be highly unnecessarily destructive of the provisions of the Act if the right of the Board to recover demurrage is limited to a period of four months, even if a party does not remove its goods as required by the Board within the time stipulated therefor. Clearly, therefore, it must follow that the Board has a right to recover the balance

of its dues which remain unpaid, if the sale of the goods does not bring in the amount sufficient to satisfy the dues of the Board, by instituting a suit as provided by section 131 of the Act. Section 63(1)(c), as observed earlier, does not, in any way, restrict the right of the Board to recover demurrage for a period of more than four months.

15. It is settled that where Court is called upon to construe an apparent conflict between the two provisions of the same statute, the principle of interpretation that would apply is the principle of harmonious construction of statutes. Two important decisions which lay down this principle are Venkataramana Devaru v. State of Mysore (A.I.R. 1958 S.C. 253) and Sultana Begum v. Prem Chand Jain (A.I.R. 1997 S.C. 1006). In Sri Venkataramana Devaru's case (supra), the Supreme Court has observed as follows:-

"The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect could be given to both. This is what is known as the rule of

harmonious construction."

In Sultana Begum's case (supra), the Supreme Court has observed as follows:-

"11. The statute has to be read as a whole to find out the real intention of the legislature.

12. In Canada Sugar Refining Co. v. R. (1898) AC 735, Lord Davy observed:-

"Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter."

This Court has adopted the same rule in M. Pentiah v. Veeramallappa Muddala, AIR 1961 SC 1107; Gamman India Ltd. v. Union of India, AIR 1974 SC 960; (1974) 1 SCC 596, Mysore State Road Transport Corporation v.

Mirza Khasim Ali Beg, AIR 1977 SC 747; Vaddeboyina Tulsamme v. Vaddeboyina Sesha Reddi, AIR 1977 SC 1944; (1977) 3 SCC 99, Punjab Beverages Pvt. Ltd. v. Suresh Chand, AIR 1978 SC 995; Commr. of Income-tax v. National Taj Traders, AIR 1980 SC 485; Calcutta gas Co. (Proprietary) Ltd. v. State of West Bengal, AIR 1962 SC 1044 and J.K. Cotton Spinning and Weaving Mills v. State of U.P. AIR 1961 SC 1170.

The rule of construction which is also spoken of as "ex visceribus actus" helps in avoiding any inconsistency either within a Section or between two different Sections or provisions of the same statute.

On a conspectus of the case law indicated above, the following principles are clearly discernible:

(1) It is the duty of the Courts to avoid a head on clash between two Sections of the Act and to construe the provisions which appear to be in conflict with each other in such a

manner as to harmonise them.

(2) The provisions of one Section of a statute cannot be used to defeat the other provisions unless the Court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the Courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, is possible, effect should be given to both. This is the essence of the rule of "harmonious construction".

(4) The Courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose".

16. In this view of the matter, the petition must succeed and the petitioner's suit is decreed with costs. The rule is made absolute.

Sd/-

S.A. BOBDE, J.